

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Division of Elementary and Secondary Education

Department Division of Public School Academic Facilities and Transportation

Contact Lori Freno E-mail lori.freno@arkansas.gov Phone 501-682-4234

Statutory Authority for Promulgating Rules Ark. Code Ann. §§ 6-21-114, 804, 811, 812, 25-15-201 et seq., and Act 933 of 2019.

Rule Title: Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Distress Program

Intended Effective Date

(Check One)

Date

| | | |
|--|---------------------------------------|------------------------|
| <input type="checkbox"/> Emergency (ACA 25-15-204) | Legal Notice Published | <u>10/3, 4, 5/2019</u> |
| <input checked="" type="checkbox"/> 10 Days After Filing (ACA 25-15-204) | Final Date for Public Comment | <u>11/1/19</u> |
| <input type="checkbox"/> Other _____ (Must be more than 10 days after filing date.) | Reviewed by Legislatice Council | <u>12/18/19</u> |
| | Adopted by State Agency | <u>11/6/19</u> |

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Lori Freno

lori.freno@arkansas.gov

12/20/19

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-4234

lori.freno@arkansas.gov

Phone Number

E-mail Address

General Counsel, DESE

Title

12/20/19

Date

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT: Commission for Arkansas Public School Academic Facilities and Transportation

DIVISION: Division of Public School Academic Facilities and Transportation

PERSON COMPLETING THIS STATEMENT: Lori Freno, General Counsel, Division of Elementary and Secondary Education

TELEPHONE NO. (501) 682-4234 FAX NO. None EMAIL: lori.freno@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE: CAPSAFT Rules Governing the Academic Facilities Distress Program

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes X No _____

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

3. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue Zero

Federal Funds _____

Cash Funds _____

Special Revenue _____

General Revenue Zero

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify)_____

Other (Identify)_____

Total_____

Total_____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue ___ Zero _____

General Revenue ___ Zero _____

Federal Funds_____

Federal Funds_____

Cash Funds_____

Cash Funds_____

Special Revenue_____

Special Revenue_____

Other (Identify)_____

Other (Identify)_____

Total_____

Total_____

- 5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ ___ Zero _____

\$ ___ Zero _____

- 6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ ___ Zero _____

\$ ___ Zero _____

- 7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes_____ No_____ X_____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION
RULES GOVERNING THE ACADEMIC FACILITIES DISTRESS PROGRAM
Effective: December 30, 2019**

1.00 AUTHORITY

The Commission for Public School Academic Facilities and Transportation’s authority for promulgating these Rules is pursuant to Ark. Code Ann. §§ 6-21-114, 6-21-804, 6-21-811, 6-21-812, 25-15-201 et seq., and Act 933 of 2019.

2.00 PURPOSE

The purpose of these Rules is to establish how the Arkansas Division of Public School Academic Facilities and Transportation (Division) and Commission for Arkansas Public School Academic Facilities and Transportation will evaluate, assess, identify, and address those school districts in academic facilities distress.

3.00 DEFINITIONS

For the purposes of these Rules, the following terms mean:

- 3.01 "Commission" – The Commission for Arkansas Public School Academic Facilities and Transportation.
- 3.02 “Commissioner” – The Commissioner of Elementary and Secondary Education.
- 3.03 "Division" – The Arkansas Division of Public School Academic Facilities and Transportation.
- 3.04 "Facilities Distress Status" – A public school or school district classified by the Commission as being in academic facilities distress pursuant to Ark. Code Ann. § 6-21-811.
- 3.05 "Facilities Improvement Plan” – An improvement plan developed by a school district for a public school or school district as a result of having been classified as being in academic facilities distress that supplements the district's facilities master plan by:
 - 3.05.1 Identifying specific interventions and actions the public school or school district will undertake in order to correct deficient areas of practice with regard to custodial, maintenance, repair, and renovation activities in the school district; and
 - 3.05.2 Describing how the school district will remedy those areas in which the school district is experiencing facilities distress, including the designation of the time period by which the school

district will correct all deficiencies that placed the school district in facilities distress status.

- 3.06 “Material Failure” – An act so significant as to jeopardize any academic facility used by a public school or school district or any other condition of an academic facility or facilities in a public school or school district that is determined by the Division to have a detrimental impact on educational services provided by that public school or school district.
 - 3.07 “Nonmaterial Failure” – An act such that the failure to immediately intervene and correct the act or remedy the cause of the act could develop into a material failure.
 - 3.08 "Reconstitution" – The reorganization of the administrative unit or the governing school board of a school district, including, but not limited to, the replacement or removal of a current superintendent or the removal or replacement of a current school board or both.
 - 3.09 "School District" – A geographic area with an elected board of directors that qualifies as a taxing unit for purposes of ad valorem property taxes under Title 26 of the Arkansas Code and which board conducts the daily affairs of public schools under the supervisory authority vested in it by the General Assembly and Title 6 of the Arkansas Code.
 - 3.10 “School District Systems” – The operations and procedures that occur within a public school district, including without limitation:
 - 3.10.1 Academics;
 - 3.10.2 Facilities and Transportation;
 - 3.10.3 Human Capital;
 - 3.10.4 District Operations and Fiscal Governance;
 - 3.10.5 Student Support Services; and
 - 3.10.6 Stakeholder Communication/Family and Community Engagement.
 - 3.11 "State Board" – The Arkansas State Board of Education.
- 4.00 PROCESS AND PROCEDURE FOR THE CLASSIFICATION OF DISTRICTS IN ACADEMIC FACILITIES DISTRESS
- 4.01 The Commission shall classify a public school or school district as being in academic facilities distress if the Division recommends and the Commission concurs that the public school or school district has engaged in actions or inactions that result in:

- 4.01.1 Any act or violation determined by the Division to jeopardize any academic facility used by a public school or school district, including, but not limited to:
 - 4.01.1.1 Material failure to properly maintain academic facilities in accordance with state law and Rules adopted by the Commission;
 - 4.01.1.2 Material violation of local, state, or federal fire, health, or safety code provisions or laws;
 - 4.01.1.3 Material violation of applicable building code provisions or laws;
 - 4.01.1.4 Material failure to provide timely and accurate facilities master plans to the Division;
 - 4.01.1.5 Material failure to comply with state law governing purchasing, bid requirements or school construction-related laws or rules in relation to academic facilities projects;
 - 4.01.1.6 Material default on any school district debt obligation; or
 - 4.01.1.7 Material failure to plan and progress satisfactorily toward accomplishing the priorities established by the Division and the approved school district master plan; and
- 4.01.2 Any other condition of an academic facility or facilities in a public school or school district that is determined by the Division to have a detrimental impact on educational services provided by that public school or school district.

4.02 The Division shall provide written notice, via certified mail, return receipt requested, to the president of the school board and the superintendent of the school district identified or containing a school identified by the Division as being in facilities distress.

5.00 SUBMISSION OF FACILITIES IMPROVEMENT PLAN

5.01 A public school or school district classified by the Commission as being in facilities distress shall develop a facilities improvement plan within thirty (30) days from the date of classification and promptly submit the plan to the Division for review and approval.

5.01.1 A public school or school district shall review and revise its facilities improvement plan on a periodic basis as determined by the Division and

submit the updated facilities improvement plan to the Division in order for the Division to determine whether the public school or school district is correcting its deficient areas of practice regarding academic facilities.

- 5.01.2 A school district shall use the facilities improvement plan as necessary to supplement and update its facilities master plan.
- 5.02 A public school or school district in facilities distress may petition the Commission for removal from facilities distress status only after the Division has certified in writing to the Commission and school district that the public school or school district:
 - 5.02.1 Has corrected all criteria that caused the classification of facilities distress; and
 - 5.02.2 Has complied with all Division recommendations and requirements for removal from facilities distress status.
- 5.03 The Division shall submit a written evaluation of the status of each school and school district classified in facilities distress to the Commission and State Board at least once every six (6) months.
- 5.04 Every two (2) years, the Division shall:
 - 5.04.1 Determine whether the progress of each school district complies with the school district's facilities master plan and shall notify a school district of any non-compliance; and
 - 5.04.2 Review the applications made for the Academic Facilities Partnership Program to identify any school district that did not apply for state funding for necessary facilities to meet adequacy requirements and shall notify the school district of any deficiencies.
- 5.05 Within thirty (30) days of receiving the notice provided under Section 5.04.1 or 5.04.2, the school district shall submit a facilities improvement plan to the Division for review and approval that states how the school district will address the noncompliance issues contained in the notice.
- 5.06 If the Division does not approve the facilities improvement plan submitted by the school district, it shall identify the school district as being in facilities distress.
- 5.07 A school district may appeal a Division facilities distress identification to the Commission by filing an appeal in accordance with the Commission's Rules Governing Appeals from Determinations of the Division.
- 5.08 If a school district is classified as being in facilities distress and has immediate repairs, growth or suitability improvement issues, the Division, in addition to any other remedy under these Rules and Ark. Code Ann. §§ 6-21-811 and 6-21-812, may provide a loan to the school district to be repaid from any funds available that are not required to provide an adequate education.

5.08.1 Funds available that are not required to provide an adequate education include:

5.08.1.1 Fund balances and any cash on hand that are not part of foundation funding or categorical funding under Ark. Code Ann. § 6-20-2305 and are not otherwise required to provide an adequate education for students in the public school district;

5.08.1.2 Revenues that are not obligated on bonds; and

5.08.1.3 Funds remaining after the annual payment on a bond obligation are included in funds that are not required to provide an adequate education.

5.08.2 The public school district shall repay the loan on the schedule determined by the Division.

6.00 FAILED MILLAGES

6.01 Within ten (10) days of a school district's failure to pass a millage required to fulfill its obligations under its master plan, the Division shall provide written notice to the school district of the date, time, and place for a conference with the school district at which the Division will:

6.01.1 Determine whether as a result of the failed millage there are facilities issues relating to immediate repairs, the presence and number of suitability needs of public school academic facilities, or immediate need for academic facilities to meet student growth; and

6.01.2 Thoroughly discuss and explain the sanctions and requirements that are available to the Commission if the school district or a school within the district is classified by the Commission as being in facilities distress under Ark. Code Ann. §§ 6-21-811 and 6-21-812.

6.02 The written notice required under Section 6.01 of these Rules shall be provided via certified mail to the president of the school board and the superintendent of the school district.

6.03 If the Commission determines that there are immediate repairs, growth or suitability issues that require expedited attention, the Commission may direct the school district to conduct a special election to vote on a millage increase.

6.03.1 The special election shall include only those issues that are mutually agreed upon between the Division and the school district.

6.03.2 The special election date shall be mutually agreed to by the Division and the school district and shall not be later than seven (7) months after the date of the election at which the millage failed unless it is necessary to extend the date beyond seven (7) months because of restrictions on the number of elections that may be held within a calendar year.

6.05 If within ninety (90) days from the notice provided to the district pursuant to Section 6.01 of these Rules; the school district has not set an election date, the Division shall identify the school district as being in facilities distress.

6.06 A public school district able to finance the immediate repairs, growth, and suitability improvements determined to exist by the Commission without the necessity of a special election on increasing its millage may enter into an agreement with the Division to fund its improvements separately, which agreement shall include a timeframe for completion.

6.07 The Division shall identify the school district as being in facilities distress for failure to implement the agreed upon plan for immediate repairs, growth, and suitability improvements within the timeframe specified in the agreement.

7.00 PRIOR APPROVAL OF DEBT

No school district identified by the Division or classified by the Commission as being in facilities distress may incur any debt without the prior written approval of the Commission.

8.00 ACADEMIC FACILITIES DISTRESS CLASSIFICATION

When a school district is classified by the Commission to be in facilities distress, the Division may, with the approval of the Commission:

8.01 Provide on-site technical evaluation and assistance and make recommendations to the district superintendent regarding the care and maintenance of any academic facility in the district. Any school district classified as being in facilities distress status shall accept on-site technical evaluation and assistance from the Division. The written recommendations of the Division are binding on the district, the superintendent, and the school board;

8.02 Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district, and

8.02.1 Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the Commissioner;

8.02.2. Compensate the individual operating the school district from school district funds; and

- 8.02.3 Authorize the individual to remove, replace, reassign, or suspend public school district personnel in accordance with state law;
- 8.03 Suspend or remove some or all of the current board of directors and call for the election of a new school board for the school district, in which case the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;
- 8.04 Remove on a temporary basis some or all of the powers and duties granted to the current public school district board of directors under Ark. Code. Ann. § 6-13-620 or any other applicable law but allow the public school district board of directors to continue to operate under the direction and approval of the Commissioner.
 - 8.04.1 The Commission shall defined the powers and duties of the public school district board of directors under this section.
 - 8.04.2 The public school district board of directors shall act in an advisory capacity to the Commissioner with respect to all other powers and duties maintained by the Commissioner;
- 8.05 Require the school district to operate without a local school board under the supervision of the local superintendent or an individual or panel appointed by the Commissioner;
- 8.06 Waive the application of Arkansas law or the corresponding State Board of Education or Commission rules with the exception of:
 - 8.06.1 The Teacher Fair Dismissal Act of 1983, Ark. Code Ann. § 6-17-1501 et seq.;
 - 8.06.2 The Public School Employee Fair Hearing Act, Ark. Code Ann. § 6-17-1701 et seq.;
 - 8.06.3 Special education programs as provided in Title 6 of the Arkansas Code;
 - 8.06.4 Conducting criminal background checks for employees as provided in Title 6 of the Arkansas Code; and
 - 8.06.5 Health and safety codes as established by the State Board, the Commission, and local governmental entities;
- 8.07 In the absence of a school district board of directors, direct the Commissioner to assume all authority of the board of directors as may be necessary for the day-to-day governance of all school district systems;
- 8.08 Require reassignment of some or all of the administrative, instructional, or support staff of a public school;

- 8.09 Require reorganization, closure, or dissolution of one (1) or more of the public schools within the classified school district;
- 8.10 Return the administration of the school district to the former board of directors, or place the administration of the school district in a newly elected school Board of directors (with the school district to reimburse election costs) if:
 - 8.10.1 The Division certifies in writing to the Commission and to the school district that the school district has corrected all issues that caused the classification of facilities distress and the school district has not experienced any additional indicators of facilities distress; and
 - 8.10.2 The Commission determines the school district has corrected all issues that caused the classification of facilities distress;
- 8.11 Require school district staff and employees to attend training in areas of concern for the public school or school district;
- 8.12 Require a school district to cease all expenditures related to activities not described as part of an adequate education in Ark. Code Ann. § 6-20-2302 and place money that would have been spent on the activities into an academic facilities escrow account to be released only upon approval by the Division for use in conjunction with a local academic facilities project. School districts shall include a clause addressing this contingency in all contracts with personnel who are involved with activities not described as part of an adequate education;
- 8.13 Notify the public school or school district in writing that the deficiencies regarding academic facilities shall be corrected within a time period designated by the Division;
- 8.14 Petition the State Board at any time for the consolidation, annexation, or reconstitution of a school district in facilities distress or take other appropriate action as allowed by law in order to secure and protect the best interest of the educational resources of the state or to provide for the best interests of students in the district;
- 8.15 Correct the failure of the school district to complete its agreed plan or to pass the millage in the special election as described in Section 6.00 of these Rules by contracting for and completing the necessary improvements under the agreed plan;
- 8.16 If the academic facilities in the public school district in facilities distress are inadequate to provide an adequate education, recommend that the State Board dissolve the school district and transfer students to public schools in other public school districts;

- 8.17 Take any other action allowed by law that is deemed necessary to assist a public school or school district in correcting the issues that caused the classification of facilities distress, to secure and protect the best interest of the educational sources of the state, or to provide for the best interest of students in the school district.

9.00 STATE BOARD/DIVISION/COMMISSION AUTHORITY

- 9.01 Upon consideration of a Division petition under Section 8.14 of these Rules, the State Board may approve the petition or take other appropriate action as allowed by law.
- 9.02 The State Board shall consolidate, annex, or reconstitute any school district that fails to remove itself from the classification of a school district in facilities distress within five (5) consecutive school years of classification of facilities distress status.
 - 9.02.1 The State Board may grant additional time for a public school or school district to remove itself from facilities distress by issuing a written finding supported by a majority of the State Board explaining in detail that the public school or school district could not remove itself from facilities distress during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.
- 9.03 If the State Board elects to dissolve the school district and transfer students to public schools in other public school districts, the State Board shall assign the public school district's territory, property and debt.
- 9.04 Nothing in Ark. Code Ann. § 6-21-811 prevents the Division, Commission, or State Board from taking any of the actions listed in that section at any time to address a public school or public school district in facilities distress.

10.00 APPEAL PROCESS

A school district may appeal any determination of the Division to the Commission by filing an appeal in accordance with Commission's Rules Governing Commission Appeals from Determinations of the Division.

11.00 SCHOOL CHOICE AND ACADEMIC FACILITIES DISTRESS

- 11.01 Any student attending a public school district classified as being in facilities distress shall automatically be eligible and entitled under the Arkansas Public School Choice Act of 2015, Ark. Code Ann. § 6-18-1901 et seq., to transfer to another school district not in facilities distress during the time period that a district is classified as being in facilities distress.

- 11.02 The student is not required to file a petition to transfer by May 1 but shall meet all other requirements and conditions of the Arkansas Public School Choice Act of 2015, Ark. Code Ann. § 6-18-1901 et seq.
- 11.03 The resident district shall pay the cost of transporting the student from the resident district to the nonresident district.
- 11.04 The nonresident district shall count the student for average daily membership purposes.

12.00 INSPECTIONS

- 12.01 The Division shall conduct random unannounced on-site inspections of all academic facilities to ensure compliance with the school district's facilities master plan and, if applicable, the school district's facilities improvement plan, in order to preserve the integrity of and extend the useful life of public school academic facilities and equipment across the state.
- 12.02 The Division shall submit reports regarding its on-site inspections of academic facilities to the Commission within thirty (30) days of completion of the on-site inspections.
- 12.03 Based on the Division's on-site inspection or notification by the Division to the Commission that the changes or additions to a school district's facilities master plan or facilities improvement plan required by the Division have not been implemented within the time period prescribed by the Division, the Commission shall restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the General Assembly.

13.00 EARLY INDICATORS OF FACILITY DISTRESS

- 13.01 By August 31 of each year, the Division shall notify the superintendent of a school district if the Division is aware the school district has experienced two (2) or more indicators of facilities distress in one (1) school year that the Division deems to be nonmaterial, but that without intervention could place the district in facilities distress.
- 13.02 By August 31 of each year, the superintendent of a school district shall report to the Division if the superintendent is aware the school district has experienced two (2) or more indicators of facilities distress in one (1) school year that the superintendent deems to be nonmaterial, but that without intervention could place the district in facilities distress.
- 13.03 The Division and the superintendent shall review all data related to the nonmaterial indicators of facilities distress.
 - 13.03.1 Within thirty (30) days of the Division's determination that the school district may be experiencing facilities distress at a nonmaterial level, the

Division shall provide a notice to the school district's superintendent and board of directors that:

13.03.1.1 Describes the nonmaterial indicators of facilities distress that could have a detrimental impact on educational services provided by the affected public school or the school district if not addressed; and

13.03.1.2 Identifies the support available from the Division to address each nonmaterial indicator of facilities distress.

13.03.2 The board of directors shall place on the agenda for the next regular scheduled meeting of the board of directors a discussion of the notice of nonmaterial indicators of facilities distress.

13.04 If any condition of an academic facility raises a significant health or safety issue, the superintendent of the school district where the academic facility is located or the person responsible for the management of the academic facility shall immediately notify the Division and the board of directors of the school district.

13.04.1 The board of directors shall place on the agenda for the next regularly scheduled meeting of the board of directors a discussion of the notice of the significant health or safety issue.